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SENATE BILL 279

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Richard C. Martinez

FOR THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE SOLID WASTE ACT TO  
PROVIDE FOR OPTIONAL RATHER THAN MANDATORY PUBLIC HEARINGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-9-23 NMSA 1978 (being Laws 1990,  
Chapter 99, Section 23) is amended to read:

"74-9-23. SOLID WASTE FACILITY PERMIT--WHEN APPLICATION  
DEEMED COMPLETE--NOTICE OF HEARING. --

A. An application for a solid waste facility permit  
under the provisions of Section [~~20 of the Solid Waste Act~~]  
74-9-20 NMSA 1978 shall be deemed complete when the director  
has received all information required under that section and  
Section [~~21 of the Solid Waste Act~~] 74-9-21 NMSA 1978. At any  
time during the application process that the director  
determines that additional information is required from an

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1 applicant or that information furnished is incomplete, ~~he~~ the  
2 director shall notify the applicant in writing within ten days  
3 of the date that determination is made.

4 B. After the director's determination that a permit  
5 application is complete, the director shall provide an  
6 opportunity to the public to comment on the permit application  
7 and to request a public hearing.

8 ~~[B.]~~ C. Within sixty days of the director's  
9 determination that a permit application is complete, the  
10 director shall determine if a public hearing should be held  
11 and, if so, set a date, time and location for a hearing on the  
12 application and give notice of the hearing date, time and  
13 location and a brief description of the application in the same  
14 manner as required in Section ~~[22 of the Solid Waste Act]~~  
15 74-9-22 NMSA 1978 and to any person who makes a written request  
16 to the director for notice regarding a specific application.  
17 Except as otherwise provided in this section, hearings shall be  
18 conducted in accordance with the provisions of Section ~~[29 of~~  
19 ~~the Solid Waste Act]~~ 74-9-29 NMSA 1978. "

20 Section 2. Section 74-9-24 NMSA 1978 (being Laws 1990,  
21 Chapter 99, Section 24, as amended) is amended to read:

22 "74-9-24. SOLID WASTE FACILITY PERMIT--ISSUANCE AND  
23 DENIAL--GROUNDS--NOTIFICATION OF DECISION--PERMIT RECORDING  
24 REQUIREMENT.--

25 A. The director, within one hundred eighty days

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1 after the application is deemed complete, ~~[and after a public~~  
2 ~~hearing]~~ shall issue a permit, issue a permit with terms and  
3 conditions or deny a permit application. The director may deny  
4 a permit application on the basis of information in the  
5 application or evidence presented at ~~[the]~~ a hearing, or both,  
6 if he makes a finding that granting the permit would be  
7 contradictory to or in violation of the Solid Waste Act or any  
8 regulation adopted ~~[under it]~~ pursuant to the provisions of  
9 that act. ~~[He]~~ The director may also deny a permit application  
10 if the applicant fails to meet the financial responsibility  
11 requirements established by the board ~~[under]~~ pursuant to the  
12 provisions of Subsection A of Section 74-9-8 NMSA 1978 and  
13 Section 74-9-35 NMSA 1978.

14 B. The director may deny ~~[any]~~ a permit application  
15 or revoke a permit if ~~[he]~~ the director has reasonable cause to  
16 believe that any person required to be listed on the  
17 application pursuant to Section 74-9-20 NMSA 1978 has:

18 (1) knowingly misrepresented a material fact  
19 in application for a permit;

20 (2) refused to disclose or failed to disclose  
21 the information required ~~[under]~~ pursuant to the provisions of  
22 Section 74-9-21 NMSA 1978;

23 (3) been convicted of a felony or other crime  
24 involving moral turpitude within ten years immediately  
25 preceding the date of the submission of the permit application;

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1 (4) been convicted of a felony, within ten  
2 years immediately preceding the date of the submission of the  
3 permit application, in any court for any crime defined by state  
4 or federal statutes as involving or being restraint of trade,  
5 price-fixing, bribery or fraud;

6 (5) exhibited a history of willful disregard  
7 for environmental laws of any state or the United States; or

8 (6) had any permit revoked or permanently  
9 suspended for cause under the environmental laws of any state  
10 or the United States.

11 ~~[C.— In making a finding under Subsection B of this~~  
12 ~~section, the director may consider aggravating and mitigating~~  
13 ~~factors presented by any party at the hearing.—~~

14 ~~D.]~~ C. If an applicant whose permit is being  
15 considered for denial or revocation on any basis provided in  
16 this section has submitted an affirmative action plan that has  
17 been approved in writing by the director and plan approval  
18 includes a period of operation under a conditional permit or  
19 license that will allow the applicant a reasonable opportunity  
20 to affirmatively demonstrate its rehabilitation, the director  
21 may issue a conditional license for a reasonable period of time  
22 of operation. In approving an affirmative action plan intended  
23 to affirmatively demonstrate rehabilitation, the director may  
24 consider the following factors:

25 (1) implementation by the applicant of formal

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1 policies;

2 (2) training programs and management control  
3 to minimize and prevent the occurrence of future violations;

4 (3) installation by the applicant of internal  
5 environmental auditing programs;

6 (4) the discharge of individuals convicted of  
7 any crimes set forth in Subsection B of this section; and

8 (5) such other factors as the director may  
9 deem relevant.

10 ~~[E.]~~ D. ~~[Within sixty days of the date of the~~  
11 ~~closing of the hearing on a permit application]~~ The director  
12 shall notify the applicant by certified mail of the issuance,  
13 denial or issuance with conditions of a permit and the reasons  
14 therefor. Any person who has made a written request to the  
15 director to be notified of the action taken on the application  
16 shall be given written notice of the director's action.

17 ~~[F.]~~ E. No permit for the operation of a solid  
18 waste facility shall be valid until the permit or a notice of  
19 the permit and a legal description of the property on which the  
20 facility is located are filed and recorded in the office of the  
21 county clerk in each county in which the facility is located.

22 ~~[G.]~~ F. Except as otherwise provided by law:

23 (1) each permit issued for a publicly owned  
24 and publicly operated new or re-permitted existing landfill,  
25 transfer station, recycling facility or composting facility

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1 shall remain in effect throughout the active life of the  
2 landfill, transfer station, recycling facility or composting  
3 facility as described in the approved permit or for twenty  
4 years, whichever is less. Each permit issued for a publicly  
5 owned landfill, transfer station, recycling facility or  
6 composting facility that is privately operated pursuant to a  
7 contract of no more than four [~~years~~] years' duration entered  
8 into in accordance with the state or local procurement code  
9 shall remain in effect throughout the active life of the  
10 landfill, transfer station, recycling facility or composting  
11 facility as described in the approved permit or for twenty  
12 years, whichever is less. Each time the contract is renewed,  
13 the director shall review the contract to determine whether the  
14 term of the permit shall be governed by this paragraph or  
15 Paragraph (2) of this [~~section~~] subsection. Each permit shall  
16 be reviewed by the department of environment at least once  
17 every ten years. The review shall address the operation,  
18 compliance history, financial assurance and technical  
19 requirements for the landfill, transfer station, recycling  
20 facility or composting facility. At the time of the review  
21 there shall be public notice in the manner prescribed by  
22 Section 74-9-22 NMSA 1978. If the secretary of environment  
23 determines that there is significant public interest, a  
24 nonadjudicatory hearing shall be held as part of the review.  
25 The secretary may require appropriate modifications of the

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1 permit, including modifications necessary to make the permit  
2 terms and conditions consistent with statutes, regulations or  
3 judicial decisions;

4 (2) each permit issued for a privately owned  
5 new or repermited existing landfill, transfer station,  
6 recycling facility or composting facility shall remain in  
7 effect for ten years or for the active life of the facility,  
8 whichever is less. Each permit issued for a publicly owned  
9 landfill, transfer station, recycling facility or composting  
10 facility that is leased to a private person or that is operated  
11 by a private person pursuant to a contract of more than four  
12 [~~years~~] years' duration shall remain in effect for ten years or  
13 for the active life of the landfill or facility, whichever is  
14 less. Each permit shall be reviewed at least every five years  
15 by the department of environment. Interested parties may  
16 petition the department for review, in addition to the five-  
17 year review, provided that the director shall have discretion  
18 to determine whether there is good cause for such an additional  
19 review. The review shall address the operation, compliance  
20 history, financial assurance and technical requirements for the  
21 landfill, transfer station, recycling facility or composting  
22 facility. At the time of the review there shall be public  
23 notice in the manner prescribed by Section 74-9-22 NMSA 1978.  
24 If the secretary of environment determines that there is  
25 significant public interest, a nonadjudicatory hearing shall be

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1 held as part of the review. The secretary may require  
2 appropriate modifications of the permit, including  
3 modifications necessary to make the permit terms and conditions  
4 consistent with statutes, regulations or judicial decisions;  
5 and

6 (3) the term of permits for facilities not  
7 specified by this subsection shall be governed by existing or  
8 amended regulations adopted by the board.

9 ~~[H.]~~ G. The director shall issue separate special  
10 waste permits for all solid waste facilities that transfer,  
11 process, transform, recycle or dispose of special waste  
12 pursuant to regulations adopted by the board. "

13 Section 3. Section 74-9-28 NMSA 1978 (being Laws 1990,  
14 Chapter 99, Section 28) is amended to read:

15 "74-9-28. OPPORTUNITY FOR PRIOR HEARING ~~[REQUIREMENT FOR~~  
16 ~~ALL]~~--ADJUDICATORY ACTIONS. --

17 A. The division shall provide an opportunity to the  
18 public to comment on the permit application and to request a  
19 public hearing prior to taking any of the following  
20 adjudicatory actions ~~[by the division are subject to prior~~  
21 ~~hearing in accordance with the requirements of Section 29 of~~  
22 ~~the Solid Waste Act, in addition to any specific hearing~~  
23 ~~requirements and procedures under other provisions of that~~  
24 ~~act]:~~

25 (1) issuance, refusal to issue or modify and

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1 revocation of permits for solid waste facilities;

2 [~~(2) administrative enforcement actions; and~~]

3 or

4 [~~(3)~~] (2) actions on requests for variances  
5 and exemptions.

6 B. In any adjudicatory hearing, the director has  
7 and may delegate to the hearing officer the power to issue  
8 subpoenas for the attendance and testimony of witnesses and the  
9 production of relevant documentary evidence. The subpoenas may  
10 be enforced by action brought in the district court for the  
11 county in which the hearing is held. "

12 Section 4. Section 74-9-29 NMSA 1978 (being Laws 1990,  
13 Chapter 99, Section 29) is amended to read:

14 "74-9-29. [HEARING] PROVISIONS FOR ADJUDICATORY  
15 ACTIONS. --

16 A. The director shall adopt procedural regulations  
17 to govern the procedures to be followed in [~~hearings on~~] the  
18 adjudicatory actions of the director. No adjudicatory actions  
19 under the Solid Waste Act shall be taken until these  
20 regulations are adopted. As a minimum, the procedural  
21 regulations shall provide:

22 (1) for hearings to be public;

23 (2) requirements for prior notice of the  
24 variance or exemption request hearings and the methods for  
25 giving that notice, which shall be designed to inform

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1 interested and affected persons of the nature of the action to  
2 be considered and the date, time and place of the hearing;

3 (3) for maintenance of a list of persons that  
4 desire to have notice of variance [~~request-hearings~~] requests  
5 and provisions for giving notice to those persons;

6 (4) a reasonable opportunity for all persons  
7 desiring to be heard on a variance or exemption request or a  
8 permit action to be heard without making the hearing process  
9 unreasonably lengthy or cumbersome or burdening the record with  
10 unnecessary repetition;

11 (5) procedures for discovery;

12 (6) assurance that procedural due process  
13 requirements are satisfied;

14 (7) for the director to designate a hearing  
15 officer to conduct a hearing and make a report and  
16 recommendation to the director;

17 (8) for the maintenance of a record of the  
18 hearing proceedings and assessment of the costs of any  
19 transcription of testimony that is required for judicial review  
20 purposes; and

21 (9) for the place of the hearing to be in  
22 Santa Fe, and at other places the board may prescribe, for  
23 hearings on actions of general statewide application, for  
24 hearings on actions of limited local application to be held at  
25 a place in the area affected and for enforcement actions to be

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1 heard in Santa Fe.

2 B. Adjudicatory actions taken by the director  
3 [~~following a hearing on adjudicatory actions~~] shall be:

4 (1) written and shall state the reasons for  
5 the action;

6 (2) made public when taken;

7 (3) communicated to all persons that have made  
8 a written request for notification of the action taken; and

9 (4) taken within not more than thirty days  
10 after the closing of the [~~hearing~~] record or the date of  
11 submission of a report by a hearing officer. "

12 Section 5. Section 74-9-30 NMSA 1978 (being Laws 1990,  
13 Chapter 99, Section 30) is amended to read:

14 "74-9-30. JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS. --

15 A. Any person adversely affected by an  
16 administrative action taken by the board or the director may  
17 appeal the action to the court of appeals. The appeal shall be  
18 on the record [~~made at the hearing. To support his appeal, the~~  
19 ~~appellant shall make arrangements with the division for a~~  
20 ~~sufficient number of transcripts of the record of the hearing~~  
21 ~~on which the appeal is based. The appellant shall pay for the~~  
22 ~~preparation of the transcripts~~].

23 B. On appeal, the court of appeals shall set aside  
24 the administrative action only if it is found to be:

25 (1) arbitrary, capricious or an abuse of

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**discretion;**

**(2) not supported by substantial evidence in  
the record; or**

**(3) otherwise not in accordance with law. "**